

APPLICATION NO. 09/894,448  
EXAMINER: STEPHEN M. D AGOSTA

RESPONSE FILED: JUNE 9<sup>TH</sup>, 2006  
ART UNIT: 2683

### REMARKS

This response is provided to the Office Action mailed on December 9<sup>th</sup>, 2005. With this response claims 1-38, as previously presented, remain pending. Upon consideration of the following remarks, favorable reconsideration of the above-captioned application is respectfully requested.

#### Allowable Subject Matter

Applicant would like to thank the Examiner for the indication of allowable subject matter. There does, however, appear to be something of an inconsistency between the summary report and the detail of the Action. In the summary, claim 4 is denoted as merely objected to, while in the body of the Action it appears as rejected. Moreover, in the summary, claim 5 is denoted as rejected yet there is no mention of such a rejection in the body of the Action. Applicant has interpreted this to mean that this was simply a typo and that the Examiner intended to represent claim 5 as being patentable. Confirmation of Applicant's understanding is respectfully requested.

#### §103(a) Rejection of Claims 1, 8, 9, 15, 17-21, 28-30 and 34

On page 2 of the Action, claims 1, 8, 9, 15, 17-21, 28-30 and 23 were rejected as being unpatentable over the Cudak reference (USP 6,253,063) in view of the Mushkin reference (USP 6,859,443). In response, Applicant respectfully traverses the rejection of such claims.

Applicant continues to assert that the Cudak fails to disclose or suggest modifying an RF spectrum (or, bandwidth) to improve a channel quality condition. Rather, Cudak teaches adjusting the data rate to accommodate a given channel quality condition. In this regard, if the channel quality fails to support a required transmission quality (e.g., C/I) it throttles back the data

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rate. In contrast, the claimed invention modifies the physical RF bandwidth (or, the size of the RF spectrum) allocated to the channel in an attempt to improve the channel conditions. In particular, and contrary to the teachings of the Cudak, the claimed invention decreases the RF spectrum allocated to a communication channel in an attempt to improve the perceived channel conditions.

Mushkin is cited as curing this deficiency in the Cudak reference. Applicant notes, however, that Mushkin teaches that to cure perceived channel problems (e.g., insufficient bandwidth), rather than reducing the RF spectrum (as presented in rejected claims 1, 15, 21, 35 and 37), Mushkin teaches that the RF spectrum provided to a communication channel be expanded or enlarged (col. 4, lines 50-60; col. 6, lines 21-30; Figs. 9A-9C, 10A-10C) to attempt to cure the problem.

In this regard, Applicant respectfully submits that the combination of Cudak and Mushkin fail to disclose or suggest that which is particularly claimed in at least rejected claims 1, 15, 21, 35 and 37. On the contrary, Applicant respectfully submits that an artisan viewing such references would recognize that such references actually teach away from that which is claimed in the pending application. Accordingly, Applicant respectfully requests that the §103(a) rejection of claims 1, 15, 21, 35 and 37 be withdrawn.

Applicant notes that claims 8, 9, 17-20, 28-30 and 34 depend from patentable base claims 1, 15 or 21 respectively. Accordingly, in addition to any independent basis for patentability, Applicant respectfully submits that such claims are similarly patentable over the Cudak and Mushkin references by virtue of at least such dependency. Thus, Applicant respectfully requests that the §103(a) rejection of claims 8, 9, 17-20, 28-30 and 34 be withdrawn.

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§103(a) Rejection of Claims 2-4, 6, 7, 16, 22-24, 26, 27 and 35-38

Beginning on page 6 of the Action, claims 2-4, 6, 7, 16, 22-24, 26, 27 and 35-38 were rejected as being unpatentable over the Cudak/Mishkin references in further view of the Gilbert reference (USP 6,016,311) or the Scholefield reference (USP 5,742,592) pursuant to 35 USC §103(a). In response, Applicant respectfully traverses the basis for the rejection of such claims.

In particular, Applicant notes that the Cudak/Mishkin references fail to disclose suggest that which is claimed in independent claims 1, 15, 21, 35 and 37, as presented above. Applicant notes that neither the Gilbert reference nor the Scholefield reference are cited as teaching, nor do they teach, reducing an RF spectrum of a channel to improve the channel quality conditions associated with that channel as provided in the patentable base claims.

Applicant notes that claims 2-4, 6, 7 16, 22-24, 26, 27, 32 and 33 each depend from a patentable base claim 1, 15, 21, 35 or 37 respectively. Thus, in addition to any independent basis for patentability, Applicant respectfully submits that such claims remain patentable over the cited references by virtue of at least such dependency. Accordingly, Applicant respectfully requests that the §103(a) rejection of claims 2-4, 6, 7, 12, 13, 16, 22-24, 26, 27 and 35-38 be withdrawn.

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### CONCLUSION

Applicant respectfully submits that pending claims 1-38, as amended, are in condition for allowance, and earnestly awaits notice thereof. Should it be determined that an additional fee is due under 37 CFR §§1.16 or 1.17, or any excess fee has been received, please charge that fee or credit the amount of overcharge to deposit account #50-0221. If the Examiner believes that there are any informalities which can be corrected by an Examiner's amendment, a telephone call to the undersigned is respectfully solicited.

Respectfully submitted,  
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Dated: June 9<sup>th</sup>, 2006

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